IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 982 of 2003 (M/S)

1. Wimco Seedldings Ltd.
Having its registered office at Indian Mercantile Chambers, Ramji Bhai Kamani Marg,
Ballard Estate,
Mumbai – 400038
Through Shri Vipin Malhotra, its Executive Director

2. Wimco Greens, an Association of Persons taken over by Wimco Seedlings having its registered office at Indian Mercantile Chambers, Ramji Bhai Kamani Marg, Ballard Estate, Mumbai – 400038
Through Shri Vipin Malhotra, its Executive Director
... Petitioners

Versus

1. State of Uttaranchal
through Secretary, Ministry of Revenue,
Government of Uttaranchal, Dehradun, Uttaranchal

2. Additional Chief Revenue Commissioner
(Circuit Court), Nainital, Uttaranchal

3. Additional District Magistrate (F.&R.) / Collector under Stamp Act 1899,
Udham Singh Nagar, Uttaranchal

4. Assistant Inspector General (Stamps)
Udham Singh Nagar, Uttaranchal ...Respondents

Sri R.K. Raizada, learned counsel for the petitioners
Sri Atual Bansal, learned Brief Holder for the State

Hon'ble B.S. Verma, J.

1. By means of this writ petition, moved under Article 226 read with 227 of the Constitution of India, the petitioners have sought a writ in the nature of certiorari quashing the impugned order dated 20.06.2003 (Annexure-I to the petition) and order dated 16.03.2002 (Annexure-2 to the petition) passed by the Additional Chief Revenue Commissioner, Nainital and Additional

District Magistrate (F.&R)/Collector, Udham Singh Nagar, respondent Nos. 2 and 3 respectively.

2. Brief facts for the disposal of this petition are that in pursuance of Reference by Assistant Inspector General (Stamp)/respondent No.4, the respondent No.3/ Additional District Magistrate (F & R)/ Collector, registered a Case No. 52/53 of 1999-2000, State Vs. M/s Wimco Greens and the proceedings were initiated u/s 33/38/40 of Indian Stamp Act, 1899 (hereinafter referred as 'Act 1899'). Thereafter, the Additional District Magistrate (F.&R.)/respondent No.3 issued summons on 06.06.2000 to Wimco Greens in respect of the document which was said to have been executed on 17.04.1995. Thereafter, Wimco Greens filed objections on several grounds and preliminary objection was also taken to the effect that the proceedings before the Additional District Magistrate (F.&R.)/respondent No.3 against Wimco Greens was time barred in view of the provisions of Section 33 of the Act 1899. Before initiating the proceedings u/s 33/40 of the Act 1899, the petitioners have stated that no prior permission of the State Government has been obtained by the Additional District Magistrate (F.&R.)/respondent No. 3 and without recourse of Section 33 (4) of the Act 1899 so as to procure the original document and that cannot be procured without prior permission of the State Government to initiate action u/s 33 (4) (5) of the Act 1899. It was further alleged in the objection that the Additional District Magistrate (F.&R.)/respondent No. 3 had no jurisdiction to initiate the proceeding u/s33 (4) (5) / 40 of the Act 1899.

3. The Additional District Magistrate (F.&R.)/respondent No. 3 approached to the State Government vide letter No. 261/5 Stamp/2001 dated 23.03.2001 and sought permission to initiate action u/s (4) and (5) of Section 33 of the Act 1899 beyond period of limitation. The respondent No. 1/State vide letter dated 30.06.2001 of the Additional Secretary, Uttaranchal addressed to District Magistrate, Udham Singh Nagar granted permission to initiate proceedings u/s (4) (5) of Section 33 of the Act 1899 against Vinay Narain Agarwal and Pawan Kumar. The said permission was granted against two persons, on 30.06.2001, namely, Vinay Narain Agarwal and Pawan Kumar and not against Wimco Greens or its constituents. On the basis of the permission granted by the State Government against the Vinay Narian Agarwal and Pawan Kumar, the Additional District Magistrate (F.&R.)/respondent No.3 issued notice dated 12.07.2001 to Wimco Greens against whom no permission was granted by the State Government. The Wimco Greens put its appearance before the Additional District Magistrate (F.&R.)/respondent No.3 and filed objection on 05.09.2001 and specifically raised the objection that the permission was in fact granted against some different persons and not against the Wimco Greens.

4. When the objection was filed by the Wimco Greens, the Additional District Magistrate (F.&R.)/respondent No.3 again on 05.10.2001 requested the State Government to amend the permission so as to initiate the proceeding against the Wimco Greens. In response

to the aforesaid letter, the Additional Secretary, State of Uttaranchal vide letter dated 01.01.2002 addressed to Additional District Magistrate (F.&R.)respondent No. 3 requesting that the State Government had no objection in the matter of imposition of penalty u/s 33 (4) (5) of the Act 1899 against Wimco Greens. The petitioners has stated that respondent No. 1/State did not amend the permission granted against the Vinay Narain Agrawal and Pawan Kumar nor granted fresh permission to the Additional District Magistrate (F.&R.)/respondent No. to initiate the proceedings u/s 33 (4) (5) of the Act 1899 against Wimco Greens and the State Government merely given **No Objection** in the matter of imposition of penalty u/s 33 (4) (5) of the Act 1899. The said objection cannot be termed as permission as provided under the Act 1899. On the basis of the said permission, the Additional District Magistrate (F.&R.)/respondent No.3 issued an amended notice to the Wimco Greens u/s 33 (4) (5) of the Act 1899 and thereafter the case was fixed for hearing on 30.06.2002.

5. The petitioners without filing the objection against the amended notice, preferred a revision before the respondent No.2/Additional Chief Commissioner. The learned respondent No. 2 /Additional Chief Commissioner after hearing the parties, dismissed the revision.

6. Feeling aggrieved by the judgment and order of the learned respondent No.2/Additional Chief Revenue Commissioner, the present petition has been preferred.

7. Heard learned counsel for the parties and perused the record.

8. The only controversy to be decided in this case is whether the subsequent permission (annexure-13 to the petition) by the State Government has **No Objection** to initiate the proceedings against the petitioners in response to the letter dated 19th October, 2001 on 01.01.2002 can be termed as permission u/s 34 (4) (5) of the Act 1899 when the previous permission has been granted against Vinay Narian Agarwal and Pawan Kumar by the State Government (Annexure-9 to the petition) dated 30th June, 2001 in which the State Government has granted permission to initiate the proceedings against Vinay Narain Agarwal and Pawan Kumar.

9. The learned counsel for the petitioners vehemently submitted that the section is of penal in nature and the permission should have been granted in a positive manner as has been granted earlier in the case of Vinay Narain Agarwal and Pawan Kumar. But in the case of the petitioners, the State Government has not granted permission. It was written to the Additional District Magistrate (F.&R.)/respondent No.3 that the Government has no objection to initiate the proceedings in the case. This objection was raised before issuing the notice by the petitioners before the Additional District Magistrate (F.&R.)/respondent No.3. In my view, before issuing the notice, the objection of the petitioners was premature. Hence it was not considered by the Additional District Magistrate (F.&R.)/respondent No.3. The Additional District Magistrate (F.&R.)/respondent

No.3 issued the amended notice to the petitioner (Wimco Greens) which was taken over by the Wimco Seedling Ltd. having its registered office at Indian Mercantile Chambers, Ramji Bhai Kamani Marg, Ballard Estate, Mumbai – 400038.

10. In my view, the revision filed by the Wimco Greens is premature because the Wimco Greens had to file objection against the amended notice before the Additional District Magistrate (F.&R.)/respondent No.3 with the averment that the amended notice issued against the Wimco Greens was issued on the basis of no objection by the State and that is not a permission in the eye of law. Before issuing the notice, the Wimco Greens filed the premature objection and the objection was considered by the Additional District Magistrate (F.&R.)/respondent No.3 at that stage.

11. Now according to the petitioners the averment made in the writ petition that the Wimco Greens, an association of the persons taken over by Wimco Seedlings having its registered office at Indian Mercantile Chambers, Ramji Bhai Kamani Marg, Ballard Estate, Mumbai. Now Wimco Greens has to be represented by Wimco Seedlings and Wimco Seedling who had not filed any objection against the amended notice which was issued by the Additional District Magistrate (F.&R.)/respondent No.3 against the Wimco Greens on the basis of alleged permission by the State Government.

12. In view of the foregoing discussion, the petitioners may file objection before the Additional District Magistrate (F.&R.)/respondent No.3 and the Additional District Magistrate (F.&R.)/respondent No.3 without being influenced by the findings of the respondent No. 2/Additional Chief Revenue Commissioner shall decide the preliminary objection in accordance with law whether the proceedings to recover the amount of deficit stamp duty can be initiated against the Wimco Greens or not and whether the no objection by the State Government to initiate the proceedings regarding deficit of stamp duty could be termed as permission under Section 34 (4) (5) of Act 1899 or the proceedings are within limitation.

13. In view of the above, the writ petition is partly allowed. The order passed by the respondent No. 2/Additioanl Chief Revenue Commissioner on 20.06.2003 (Annexure-I to the petition) is hereby set aside. The case is remanded to Additional District Magistrate (F.&R.)/respondent No.3 as mentioned above. No order as to costs.

(B.S. VERMA J.)

31st August, 2006
Shiv